IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent
appln. of: CyberSoft, Inc.

Serial No.:   09/838,979

Filed: April 19, 2001

For: SOFTWARE VIRUS DETECTION METHODS AND APPARATUS

Art Unit: 2135

Examiner: Klimach, Paula W.

Atty Doc. No.: 16-00

DECLARATION UNDER 37 C.F.R. §1.131

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

I, Peter V. Radatti, do hereby declare the following:

1) I am the named inventor of the above- identified patent application.

2) I have read and understand the present application including the claims as originally

   filed.

3) I have read and understand the Office Action dated September 23, 2004 in

   connection with the present application.

4) In the office action, claims 1-4, and 6 stand as rejected under 35 U.S.C. 103(a) as

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being unpatentable over Jordan, US Patent Publication No. 2002/0073323, filed

July 14, 2001 and claiming priority to Provisional Application No. 60/218,333,

filed July 14, 2000 ("Jordan.")

5) Claims 5, 7-12 stand as rejected under 35 U.S.C. 103(1) as being unpatentable over

Jordan as applied to claim 1 and 4, and further in view of Shieh, et. al. (U.S. Patent

No. 5,278,901) filed April 30, 1992 (Shieh.")

6) I have read and understand the Jordan and Shieh references, and the corresponding

rejections based on those references.

7) The inventions set forth in claims 1-12 of the present application were both conceived

and reduced to practice in this country or in a NAFTA or WTO member country

at least as early as December 15, 1999, which is well before the priority date of

Jordan (July 14, 2000.)

8) It should also be noted that there was due diligence from conception to the

subsequent reduction to practice.

9) Conception and reduction to practice of the invention according to those claims is

illustrated in Exhibit 1 attached hereto. Exhibit 1 was prepared by me, at a discussion

with counsel on December 15, 1999.

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10) The conception included a software virus detection method, comprising the steps of:

- interpreting code;

- writing the results of said interpretation;

- scanning the results of said interpretation for the presence of proscribed code.

(Claim 1.)

11) The conception included a method as in claim 1 wherein the step of scanning further comprising a first scanning step for the presence of code of interest. (Claim 2.)

12) The conception included a method as in claim 2 wherein the first scanning step for the presence of code of interest further comprises scanning for a file open command or a file modify command. (Claim 3.)

13) The conception included a method as in claim 2 wherein the step of scanning further comprising a second scanning step for the presence of proscribed code of interest. (Claim 4.)

14) The conception included a method as in claim 4 wherein the second scanning step for the presence of proscribed code of interest further comprises scanning for viral code or viral patterns. (Claim 5.)

15) The conception also included a software virus detection article of manufacture comprising:

- a computer readable medium; and,

- a table of interpreted results, comprising interpreted proscribed code. (Claim 6.)

16) The conception also included a software virus detection apparatus, comprising:

- a code interpreter;

- a pattern analyzer;

- a results evaluator;

- a reporter;

whereby, after proscribed code is interpreted by said interpreter and results generated, those results are reviewed by said pattern analyzer for the presence of proscribed code,

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and results reported to said results evaluator, and from said results evaluator to a reporter. (Claim 7.)

17) The conception also included an apparatus as in claim 7 wherein said code interpreter further reviews said code for the presence of code of interest. (Claim 8.)

18) The conception also included an apparatus as in claim 8 wherein said code interpreter further reviews said code for the presence of a file open command or a file modify command. (Claim 9.)

19) The conception also included an apparatus as in claim 9 wherein said pattern analyzer further reviews said code for the presence of code of interest. (Claim 10.)

20) The conception also included an apparatus as in claim 10 wherein said pattern analyzer further reviews said code for the presence of proscribed code. (Claim 11.)

21) The conception also included an apparatus as in claim 11 wherein said pattern analyzer further reviews said code for the presence of viral code or viral patterns. (Claim 12.)

22) Due diligence was exercised from the conception date, which was at least as early as

December 15, 1999 and prior to the priority dates of Jordan, to the reduction to

practice of the methods and apparatus in accordance with claims 1-12, which was at

least as early as the filing date of the present application.

The undersigned declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and thus such willful false statements may jeopardize the validity of the application or any patent issuing thereon.
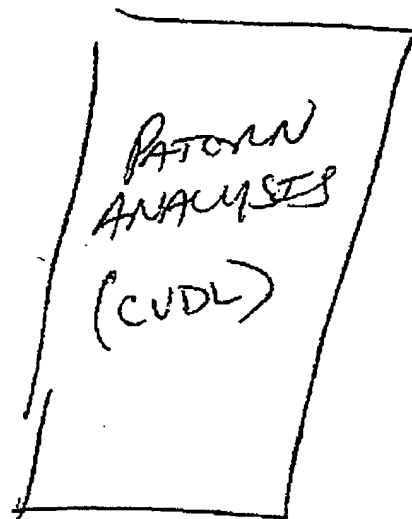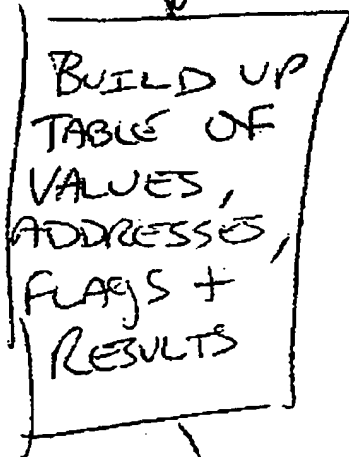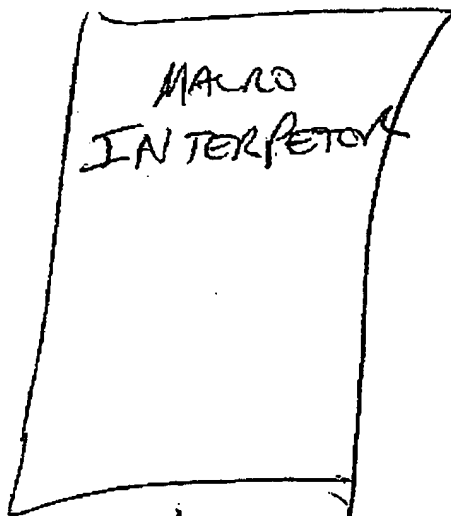
Date: 3-23-2005

Peter V. Radatti

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PETE'S MACRO
WHITE BOARD   12/15/98

$$globMACRO\$ = "NORM"$$
$$globMACRO\$ = globMACRO\$ + "AL.DOT"$$

MACRO
INTERPETOR

PATORN
ANALYSES
(CUDL)

BUILD UP
TABLE OF
VALUES,
ADDRESSES,
FLAGS +
RESULTS

BALONEY
CHEESE
BREAD

GOOD   NO GOOD

PETES MACRO   12/15/99

SET   Z = A
SET   X = B
SET   X = C

SET MAC = $Z + $Y + $X

Mgr's Program

EXTRACT MACROS

ALREADY APPROVED

MESSAGE APPROVAL ← YES

NO

VIRUS SCAN IT

DENIED ← INFECTED

NOT INFECTED

DO YOU WANT TO APPROVE IT

DONE ← NO

YES

PROCESS IT + ADD TO DB

DATA BASE OF APPROVED MACROS